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Convention on the Elimination of All Forms of Discrimination against Women

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Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

List of issues and questions in relation to the combined third to fifth periodic reports of Malaysia

General

1. The State party report was due in August 2008, but received only in September 2016. Please provide reasons for the delayed submission of the report and clarify whether the parliament was involved in the discussion of the report before its submission, as recommended by the Committee (CEDAW/C/MYS/CO/2, para. 32). Please also provide further information on the involvement of non-governmental organizations, in particular women's organizations, in the process of preparation of the report, and on the nature and extent of consultations with them. Please also clarify whether the Convention and the Committee's general recommendations are being translated into local languages and systematically integrated into capacity-building programmes for lawmakers, judges, prosecutors, lawyers, the police and other law enforcement officials, as well as non-governmental organizations.

Constitutional and legislative framework

2. The State party report indicates that although there is no specific national legislation that provides for the definition of discrimination against women, it does not bar the Government from continuing with the implementation of various measures to give effect to and achieve the objectives of this core principle (CEDAW/C/MYS/3-5, para. 2).[1] In this regard, please clarify how indirect discrimination as well as discrimination by private actors have been defined and prohibited in line with articles 1 and 2 (b) of the Convention and with target 5.1 of the Sustainable Development Goals, with regard to ending all forms of discrimination against all women and girls everywhere, including by providing

Note: The present document is being circulated in English, French and Spanish only.

[1] Unless otherwise indicated, paragraph numbers refer to the combined third to fifth periodic reports of the State party.

Please recycle

concrete examples of court cases. Please also clarify whether there has been any progress, since the statement made in November 2016 by the Ministry of Women, Family and Community Development, towards drafting and enacting domestic legislation incorporating the provisions of the Convention, particularly in the light of the decision by the Court of Appeal in the case of *AirAsia Bhd v Rafizah Shima bt Mohamed Aris* referred to in the report (para. 112).

Reservations

3. The annex to the State party report (p. 5) indicates that the State party maintains its reservations to articles 9 (2), 16 (1) (a), 16 (1) (c), 16 (1) (f) and 16 (1) (g) of the Convention on the grounds that these provisions are not compatible with the Federal Constitution and Islamic law. Please provide information on concrete steps taken to reconcile Islamic law with the requirements of articles 9 and 16 with a view to withdrawing all remaining reservations. Has the State party, for example, adopted any specific measures, such as gender-sensitization trainings, targeting individuals and institutions that exercise authority over Islam and its laws, such as the Department of Islamic Development (JAKIM) under the Office of the Prime Minister, to ensure that Islamic laws and norms are in conformity with the provisions of the Convention? What is the percentage of women who are represented in the Conference of Rulers which, according to the information provided, has the final authority to approve any proposed amendments to sharia law (annex, p. 8), and how does this body take into account the obligations of the State party under the Convention?

Access to justice

4. Please indicate whether the State party intends to revise the eligibility criteria for accessing State-sponsored legal aid in order to facilitate better access to justice by women, and provide information on measures adopted to enhance women's awareness of their rights and to enable them to avail themselves of remedies to claim their rights. Have any measures been adopted to ensure access to justice by women from disadvantaged groups, such as rural women, women from ethnic minorities and indigenous women? Please also provide information on the availability of legal aid and assistance to women who are not citizens of the State party, such as asylum-seeking women, refugee women, stateless women and migrant women (para. 175), and on the measures taken to guarantee their access to justice.

National machinery for the advancement of women

5. Please clarify which body serves as the national machinery for the advancement of women, and how gender mainstreaming is consistently applied in the development and implementation of all laws, regulations and programmes in all ministries and legislative structures. Please provide information on its status and on the human, technical and financial resources allocated thereto. Please also provide information on: (a) the challenges and achievements in the implementation of the national policy on women and the related action plan (2009-2015); (b) whether a new action plan to advance the rights of women in line with the Convention has since been adopted, and if so, how the shortcomings of the previous action plan have been addressed in the subsequent plan; and (c) how the impact of the new action plan on women's rights is systematically and regularly monitored and evaluated.

Temporary special measures

6. Please provide information on the challenges and achievements in the implementation of the gender-responsive budgeting methodology since its

introduction in 2004, and clarify how the impact of that methodology on gender equality is monitored and evaluated (para. 47). Given the reported persistence of underrepresentation of women in decision-making positions in the private sector, please explain the remaining challenges in achieving the goal set out in the policy to achieve the goal of women occupying at least 30 per cent of decision-making positions at all levels in the corporate sector by 2016 (para. 49), and provide information on additional measures adopted to address such obstacles. Does the State party intend to adopt temporary special measures, in line with article 4, paragraph 1 of the Convention and general recommendation No. 25 (2004) on temporary special measures, to address other situations where women lack substantive equality?

Stereotypes and harmful practices

7. The State party report outlines measures adopted to promote equal partnership between men and women within the home and in the education of their children (para. 53). Please provide information on the impact of such measures, such as data showing the increase in the number of men who take paternity leave or take on the responsibility for the upbringing of children, or the increase in the number of women who continue to work after giving birth. Please also clarify the current duration of paternity leave, as well as recent data showing the trend of men taking such leave. What additional measures have been taken, beyond the family context, to modify social and cultural patterns of conduct and stereotypes between men and women, following the withdrawal of the State party's reservation to article 5 (a) in July 2010? In addition, what steps have been taken to eliminate the "moral policing" of women as well as initiatives by private citizens and religious authorities to impose dress codes on women?

8. While noting that offensive language or sexist remarks have been prohibited in the parliament following the amendment of Standing Order 36 (4) of the House of Representatives in November 2012 (annex, p. 11), media reports indicate that such remarks continue to persist. How many individuals have been sanctioned since the introduction of the amendment? Please also indicate whether the State party has adopted further measures, such as compulsory gender-sensitivity training, to combat discriminatory gender stereotypes in all branches of government, including in sharia courts.

9. It has been reported that female circumcision is increasingly conducted by medical practitioners following the announcement made by the Ministry of Health that it would develop guidelines to reclassify female circumcision as medical practice. Please clarify whether such guidelines have been adopted, and provide information on the rate of female circumcision conducted in the State party, including in health-care facilities, as well as on steps taken to end the harmful practice. Please also provide information on the rate of child marriages in the State party, and on measures adopted to prohibit marriages below the age of 18 in law and in practice, since the withdrawal of the State party's reservation to article 16 (2), in line with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices and with a view to ending all child marriage by 2030 as set out in target 5.3 of the Sustainable Development Goals.

Violence against women

10. Please provide information on the prevalence of all forms of gender-based violence against women, including up-to-date data on the number of cases of domestic violence, sexual assault and rape reported, the relationship between the victim and the perpetrator, investigations, prosecutions and convictions, and

sentences imposed on perpetrators. What measures are being taken to prevent sharia courts from permitting alleged rapists to marry their underage victims and avoid prosecution? Please also clarify what steps are being taken to repeal the exception in Section 375 of the revised Penal Code which stipulates that "sexual intercourse by a man with his own wife by a marriage does not constitute rape", and to explicitly prohibit marital rape, as previously recommended by the Committee (CEDAW/C/MYS/CO/2, para. 22). Based on the State party's information that the current legal provisions provide sufficient protection to victims of marital rape (annex, p. 14), please provide up-to-date data on the number of complaints that have been filed for marital rape, the number of prosecutions and convictions, the sentences imposed on perpetrators and the remedies provided to victims. Furthermore, please clarify whether any steps are being taken to expand the coverage of the Domestic Violence Act to include intimate partner violence.

11. It is indicated that section 289 of the Criminal Procedure Code prohibits the whipping of women (annex, pp. 2-3). However, according to information received, sharia criminal law can override this clause, allowing Muslim women convicted of certain offences to be punished with up to six strokes of the cane in public. Please explain this discrepancy and clarify what measures are being taken to ensure that there are no exceptions to the prohibition of whipping. Please also provide information on measures taken to combat increasing instances of gender-based violence on the Internet.

Trafficking and exploitation of prostitution

12. Concern was expressed in the previous concluding observations regarding the lack of systematic data collection on trafficking (CEDAW/C/MYS/CO/2, para. 23), and no statistical data has been provided in the State party report regarding this issue. Please provide information, disaggregated by sex, age and nationality, on the number of reported cases of trafficking, prosecutions, convictions and sentences imposed on perpetrators. Given the lack of a formal victim identification procedure, how does the State party ensure that women and girls who are victims of trafficking, including for purposes of sexual exploitation, are quickly and effectively identified and referred to appropriate services? Please also clarify what concrete steps have been taken to ensure that trafficked women and girls are not punished for violations of immigration laws and have adequate support to be in a position to provide testimony against their traffickers, as previously recommended by the Committee (ibid., para. 24). Please also clarify whether victims of trafficking are provided temporary residence permits, irrespective of their ability or willingness to cooperate with the prosecutorial authorities.

13. Please provide information and data on the prevalence of prostitution in the State party, as well as on the applicable legal framework, clarifying whether pimps, clients and women in prostitution are liable to prosecution. Please also provide information on policies and measures adopted to prevent the sexual exploitation of women and girls, as well as on measures envisaged and/or in place to support women and girls who wish to leave prostitution.

Participation in political and public life

14. Please provide up-to-date information on the number of women, including women from marginalized groups, such as ethnic minority women, indigenous women and women with disabilities, in the parliament, the cabinet, the judiciary, the foreign service and international organizations. Please indicate whether additional measures and incentives have been envisaged and/or adopted to increase the representation of women in the above-mentioned areas, including women from marginalized groups. In the light of the withdrawal of the reservation to article 7

(b), please provide information on what recent measures have been taken to include the participation of women in the formulation of government policy and the implementation thereof, including women from marginalized groups.

Nationality

15. It is indicated in the report that an interim administrative procedure was implemented in 2010 to enable Malaysian women who are married to foreigners to confer citizenship to children born overseas after 1 January 2010 (para. 70). Please clarify how children born overseas before 1 January 2010 are able to acquire citizenship, and whether the State party has taken any additional measures to revise its legislation to allow Malaysian women to automatically confer nationality to a child born outside of the State party on an equal basis as their male counterparts. Please also indicate the steps taken to grant Malaysian women equal rights with men regarding the transmission of their nationality to their spouses of foreign nationality, in line with article 9 of the Convention. Please further clarify what measures are being taken to ensure that foreign women who are married to Malaysian men are not economically and legally dependent on their spouses, including with regard to the opening of bank accounts and the renewal of their long-term social visit passes.

Education

16. Please provide data, disaggregated by sex, on the number of women in leadership roles in academic institutions at all levels of the education system, and indicate what measures have been taken to improve the representation of women in such positions. Please also provide information on the educational attainment of girls who have been married before the age of 18, and on the percentage of teenage girls who continue their education after childbirth.

Health

17. Please comment on the prevalence of abortion in the State party and clarify the legal framework for abortion, including whether abortion is legal in cases of rape, incest or severe foetal abnormality. Please also provide information on the rate of teenage pregnancies and on what measures are being adopted to increase the accessibility, availability and affordability of contraceptives, as well as to facilitate access by women and girls to sexual and reproductive health services. Please also indicate what measures have been taken to improve access to adequate and appropriate health-care services by women and girls in detention.

Rural women and disadvantaged groups of women

18. Please provide information on the impact of measures adopted to improve the situation of rural women referred to in the State party report (paras. 157-174), in line with the Committee's general recommendation No. 34 (2016) on the rights of rural women.

Women migrant workers

19. Please provide up-to-date data on the number of women migrant workers in the State party, including those hired for domestic work, disaggregated by age and nationality. Please clarify what concrete measures have been taken to ensure that domestic migrant workers are afforded the same level of protection and benefits as other migrant workers under the Employment Act 1955. Please also explain whether the State party intends to revise the discriminatory policy that prohibits domestic workers from getting pregnant, on the basis that their contract of service would normally be for two years (annex, p. 20). In the context of improving the regulatory

framework for migrant workers, such as the drafting of the "Regulations (Terms and Conditions of Employment) of Domestic Servants", please indicate how women migrant workers, including domestic workers, as well as non-governmental organizations advocating for their rights, have been included and consulted to ensure that their concerns and views are taken into account. What further steps are being taken to combat abuse of women migrant domestic workers by their employers, such as non-payment of salary, deprivation of food, lack of adequate rest, withholding of passports and other personal documents, restrictions on the right to freedom of movement and association, as well as sexual, physical and psychological abuse?

Refugee, asylum-seeking and stateless women

20. According to the information received, asylum-seeking and refugee women fall under the category of undocumented migrants under domestic law, and thousands have been arrested and detained for immigration offences over the past few years, including women who have recently given birth, as well as girls. Please provide information on: (a) the number of women and girls placed in immigration detention, disaggregated by age and nationality; (b) measures taken to ensure that their specific protection needs are effectively addressed in detention, including protection against sexual exploitation and violence, and access to facilities and services for pregnant women and women detained with their children; (c) the alternative measures to detention that are available and the extent to which such alternatives are applied; (d) measures taken to ensure that asylum-seeking and refugee women are protected from arbitrary detention and non-refoulement; and (e) the content and regularity of trainings provided to law enforcement officials to ensure that the protection claims of asylum-seeking women and girls are considered in a gender-sensitive manner, in line with the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women. Please also provide information on the situation of stateless women in the State party, and the measures adopted to ensure that their rights are guaranteed, including access to social services, education, health care and employment.

Lesbian, bisexual and transgender women and intersex persons

21. According to information before the Committee, lesbian, bisexual and transgender women and intersex persons face multiple forms of discrimination and violence in the State party, including arbitrary arrests, violence, including sexual violence, murder, harassment and torture, as well as discrimination in education, employment, health care and access to justice. Please indicate what measures have been taken to protect such women from discrimination and violence, as well as to revise the laws and policies that are discriminatory on these bases, such as the prohibition of consensual relations between women and of "men posing as women" and vice versa, and policies aimed at "rehabilitating" or "curing" lesbian, bisexual and transgender women and intersex persons.

Marriage and family relations

22. While noting the information provided by the State party concerning the review and amendments to the Islamic Family Law Act, Rules and Regulations and Practice Directions of sharia courts (para. 185), information available to the Committee indicates that such revisions have made the criteria for polygamous marriages less stringent. Please clarify what measures have been taken to discourage and prohibit polygamy, in line with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment

No. 18 of the Committee on the Rights of the Child (2014) on harmful practices. In the light of the State party's withdrawal of its reservation to article 16 (1) (d), please indicate what concrete steps have been taken to ensure that all women enjoy the same rights and responsibilities as parents in matters relating to their children, including in cases where their spouses convert to Islam. Please further clarify what concrete steps have been taken to reconcile the inconsistencies between civil and sharia laws in the field of marriage and family relations, as previously recommended by the Committee (CEDAW/C/MYS/CO/2, para. 14), so as to ensure that women have equal rights and access to justice on all matters related to marriage and family relations.

Optional protocol and amendment to article 20 (1) of the Convention

23. Please indicate what progress has been made towards the ratification of the Optional Protocol to the Convention and the acceptance of the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.